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Newsday

Newsday (New York)

March 27, 2012 Tuesday
ALL EDITIONS

'CALM BEFORE THE STORM'; Justices seem ready to rule on health care law; Hearing today will be on 'individual mandate'

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SECTION: NEWS; Pg. A08

LENGTH: 614 words

WASHINGTON - The Supreme Court opened its historic hearings on the new health care law yesterday by signaling it's ready to clear the way to rule on the issue to be argued today: whether Congress has the power to require citizens to obtain insurance or be fined.

As protesters outside chanted slogans, three attorneys and the justices inside a courtroom packed to capacity sparred over an arcane 1867 tax statute that could bar the court from taking the case for another three years.

But in questions and comments, the justices expressed skepticism that the Anti-Injunction Act would apply to the constitutional challenge to the Affordable Care Act and force a delay in a ruling until after the health law goes into effect fully in 2014.

Both sides in the case, and legal experts said after the 90 minutes of argument that the Supreme Court appears primed to issue a decision on the health care law in June.

"In an argument day that can best be described as the calm before the storm, it quickly became clear that the Supreme Court would reach the constitutional issues everyone cares about," said Ilya Shapiro of the conservative Cato Institute, a nonprofit that opposes the law.

The arguments yesterday were a prelude to today's hearing into the core challenge that Congress overreached its power to regulate commerce and to tax in an unprecedented "individual mandate" that citizens obtain health insurance or face a fine.

A ruling this year in the case is potentially a bombshell: It would go off amid the presidential and congressional

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campaigns, affecting most Americans and a sixth of the U.S. economy.

The case against the health care law arose from a decision by Democrats in Congress to call the fine on people refusing to obtain health care a penalty and not a tax, said Supreme Court scholar Jeffrey Segal, of Stony Brook University.

"If they had called this a tax, there would be no problems constitutionally," he said. But with the political climate against tax hikes, Congress probably couldn't have passed a law that used the word.

Robert Long, an attorney the court appointed to argue the point, asserted yesterday that the fines, for all intents and purposes, are taxes.

The health care law created the fine to function much like a tax, he said. It is administered by the IRS. Those who choose not to get insurance must report it on their tax filings.

The 1867 statute bars people from filing lawsuits seeking to forestall taxes until after they've paid the levies, Long said, and the court should wait until someone is fined.

Justice Stephen Breyer rejected the argument. "Congress has nowhere used the word 'tax,'" he said. "What it says is 'penalty.'"

Breyer's position echoed those of U.S. Solicitor General Donald Verrilli for the Obama administration, and Gregory Katsas for the two groups suing to overturn the health care act.

But Verrilli also had to argue the issue both ways.

For the purposes of the 1867 tax statute, he said yesterday, the fines are not taxes. But for the argument to be presented today, the fines represent Congress' taxing power.

"Tomorrow, the question is whether Congress has the authority under the taxing power to enact and the form of the words doesn't have a dispositive effect on that analysis," Verrilli told the justices.

Citing one of the lawsuits against the health law, Justice Ruth Bader Ginsburg raised a different issue: "All this talk about tax penalties is beside the point because this suit is not challenging the penalty. This is a suit that is challenging the 'must-buy' provision."

Yesterday's arguments clarified the exemptions to the "individual mandate." The law exempts unauthorized immigrants, prison inmates and American Indians.

LOAD-DATE: March 27, 2012

LANGUAGE: ENGLISH

GRAPHIC: Photo by Charlie Archambault-Cate Hulme of Westhampton shows her support for the health care law outside the U.S. Supreme Court Building.

PUBLICATION-TYPE: Newspaper